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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,749	03/23/2004	Jeanne Guerin	BOE 0472 PA	2748
44702	7590	05/16/2006	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,749

Applicant(s)

GUERIN ET AL.

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 33-36 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-32 is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-20 and 37-47 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/21/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I in the reply filed on 03/01/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant, in the reply, elects claims 1-21 and 37-47. Claims 33-36 are, therefore, withdrawn from further consideration as being drawn to the non-elected invention.

Claim Objections

2. Claim 21 is objected to because of the following informalities: the recitation "though said air channel" (last line) should be changed to read --through said air channel--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the limitation "said condensed surfaces". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5, 9-13, 15 and 16, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bianchi (4724553).

Regarding claims 1 and 5, the Bianchi reference discloses a shower system. The system includes a shower stall including a sidewall, a ceiling and a base (3), wherein the shower stall defines a shower area (constitute by the portion labeled as 6 where the user U standing in Figure 3). The system also includes a shower stall housing (at 1) enclosing the shower stall. An air channel (constitute by element 23) is defined between the shower stall and the shower stall housing (Fig. 3). A misting nozzle (14) is positioned within the shower stall. A controller (col. 5, lines 60-68 & col. 6, lines 1-16) directs misted air through the nozzle and further activates an air flow system such that misted air within the shower area flows through and is dried in the air channel (col. 3, lines 34-38; col. 5, lines 39-44). The controller receives a signal for controlling a temperature within the shower area.

Regarding claim 2, as schematically shown in Figure 3 & 4, the shower stall is a cubicle shape defining the shower area (col. 3, lines 57-61).

Regarding claim 3, the shower system also includes a water input tank (4).

Regarding claim 9, the shower system also includes a water pipe (7,9) feeding the misting nozzle.

Regarding claim 10, the shower system includes a plurality of misting nozzles (14).

Regarding claims 11-13, as schematically shown in Figure 3, the shower system includes a first number of the misting nozzles on a first row, a second number of the misting nozzles on a second row, and a third number of the misting nozzles on a third row (note: Figure 3 actually shows 4 rows of misting nozzles).

Regarding claims 15 and 16, the base (3) is a grate which is perforated with at least one opening for receiving the mist.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 6-8, 17-20 and 37-47, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi (as discussed supra) in view of Parker et al. (6443164).

Regarding claim 4, the Bianchi reference DIFFERS in that it does not specifically include an input display as claimed. Attention, however, is directed to the Parker et al. reference which discloses another showering system having an

input display (204) for allowing a user to input commands. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Bianchi reference by employing an input display, in view of the teaching of Bianchi, in order to allow the user the input the desired commands.

Regarding claim 6, the Bianchi reference DIFFERS in that it does not specifically include a height sensor as claimed. Attention, however, is directed to the Parker et al. reference which discloses another showering system having a height sensor (202) to measure the height of the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Bianchi reference by employing an input display, in view of the teaching of Bianchi, in order to measure the height of the user.

Regarding claims 7 and 8, the modified Bianchi reference also discloses means to regulate the pressure of the misting water and the temperature (col. 5, lines 33-68). Even though the modified Bianchi reference does not specifically disclose that the means including the sensors as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Bianchi reference by employing a temperature sensor and a distance sensor in order to adjust the water and air temperatures and the water pressure to provide a comfort hydro-massage device for a user.

Regarding claim 17, even though the modified Bianchi reference does not specifically disclose that the sides of shower stall and the shower stall housing

having a condensed surface as claimed, it, however, would have been obvious to one of ordinary skill in the art to recognize that the sides of shower stall and the shower stall housing would include a surface which would allow the mist condensed on since such surface is cooler in temperature than the mist that is cycled pass it.

Regarding claim 18, the modified Bianchi reference also includes a grate (3) which includes an opening or a drain that is obviously capable of receiving water dripping from the condensed surface.

Regarding claims 19 and 20, the Bianchi reference also discloses that the controller of the shower system is used to control the misted air cycle, the washing and disinfection cycles, and the drying air cycle (col. 5, lines 4-68; col. 6, lines 1-16). Even though the Bianchi reference does not specifically disclose a predetermined time period, i.e. 60 seconds, 240 seconds and so on for activating and running a cycle as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Bianchi reference by employing a predetermined time period for each cycle. Such modification would be considered a mere choice of a preferred programming selection for each of the cycle on the basis of its suitability for the intended use.

Claims 37 and 38 recite limitations that are similar to the limitations recited in claims 1, 3 and 19 which have been rejected as discussed supra.

Claims 39-47 recite limitations that are substantially similar to the limitations recited in claims 1, 3, 11-13, 17 and 19 which have been rejected as discussed supra.

Allowable Subject Matter

9. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: none of the cited prior art teaches a shower system having, in conjunction with other limitations, the controller which activates only the second row of misting nozzles when the user is within a second height range.

11. Claims 21-32 allowed over the prior art of record.

12. The following is an examiner's statement of reasons for allowance: none of the cited prior art teaches an airplane shower system having, in conjunction with other limitations, the controller which activates the first and second rows of misting nozzles when the user is within the first height range and activates the second row of misting nozzles when the user is within the second height range.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh
Primary Examiner
Art Unit 3751